

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CRIMINAL ACTION
)	
HENRY OBILO,)	1:09-cr-47
)	
Defendant.)	
_____)	

REPORTER'S TRANSCRIPT

JURY TRIAL

VOLUME 3

Thursday, April 9, 2009

BEFORE: THE HONORABLE T.S. ELLIS, III
Presiding

APPEARANCES: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN EISINGER, AUSA
TYLER NEWBY, AUSA

For the Government

JOHN IWEANOGE, ESQ.

For the Defendant

MICHAEL A. RODRIQUEZ, RPR/CM/RMR
Official Court Reporter
USDC, Eastern District of Virginia
Alexandria Division

MICHAEL A. RODRIQUEZ, RPR/CM/RMR

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(Court recessed)

PROCEEDINGS

(Court called to order at 9:06 a.m. in USA v. Obilo.)

(Jury not present.)

THE COURT: Bring the jury in.

(Jury impaneled at 9:07 a.m.)

THE COURT: Good morning, ladies and gentlemen.

Again I can see all of you are here. We will take the roll for purposes of the record.

(Roll call, all jurors present.)

THE COURT: Again, good morning, ladies and gentlemen.

Let me confirm once again that none of you had any difficulty in adhering to the Court's instructions and to refrain from discussing the matter with anyone.

(Jurors indicating.)

THE COURT: Good.

All right. You may proceed now with your deliberations. As I told you yesterday, you may deliberate as long or as little as you like. You may not deliberate unless all 12 of you are present in the room with the door closed.

Mr. Wood, are all the exhibits, books and everything in there?

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1 THE MARSHAL: Yes, your Honor.

2 THE COURT: You also may determine when you
3 will take breaks. When you do so, knock on the door and
4 tell Mr. Wood. When you are taking breaks, you may not, of
5 course, deliberate.

6 You may follow Mr. Wood into the jury room.

7 (Jury excused to deliberate at 9:09 a.m.)

8 (Court recessed at 9:10 a.m.)

9 (Court called to order at 10:35 a.m.)

10 THE COURT: This is United States against Henry
11 Obilo, 09-47.

12 The record will reflect that counsel and
13 defendant are present and prepared to proceed.

14 Mr. Iweanoge, I take it you had enough time to
15 complete your task.

16 ATTORNEY IWEANOGE: Yes, Judge. Believe it or
17 not, if I knew this -- I guess that's why I'm a lawyer -- I
18 got there, and then they said because he is coughing and
19 sniffing, that they could not do the procedure. They will
20 have to move it to another day.

21 I'm like, "Should have told me this on the
22 phone."

23 THE COURT: But even so, it was important for
24 you to be there.

25 ATTORNEY IWEANOGE: That's true, Judge.

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1 Because I would have been sleeping on the coach.

2 THE COURT: All right. We will now proceed.

3 JURY VERDICT

4 THE COURT: I have a note from the jury that
5 says, "9 April 2009. We have a verdict." Signed, Victor
6 Gordeuk.

7 Now, the way in which a verdict is received in
8 this case -- no, no, no, no.

9 (Pause.)

10 THE COURT: Thank you.

11 The way in which the verdict will be received
12 is that the deputy clerk will ask the foreperson for the
13 verdict form.

14 I will review it to insure that it is correct
15 as to form, and then I will have the foreperson -- I beg
16 your pardon -- the deputy clerk publish the verdict, with
17 the defendant standing, facing the jury.

18 Now, if there is a formal problem with the
19 verdict form -- in other words, if they fail to mark
20 anything or mark both or fail to sign -- I will have counsel
21 at the bench to resolve the formal problem.

22 Otherwise, this is a simple jury verdict form,
23 and I don't anticipate any problem.

24 I will then direct the deputy clerk to poll the
25 jurors to insure that it is the verdict of each juror, and

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1 that the verdict is unanimous.

2 And then I will have some words of thanks for
3 the jury and release them, and so whatever else is required
4 on the basis of the verdict.

5 Mr. Wood, you may bring the jury in.

6 And I will make this note a part of the record.

7 (Jury impaneled at 10:35 a.m.)

8 THE COURT: Ladies and gentlemen, I have a note
9 from your foreperson indicating that the jury has reached a
10 verdict.

11 The way in which the verdict is received and
12 published in this Court is the deputy clerk will first ask
13 the foreperson for the verdict.

14 I will review the form to insure that it's
15 correct in a formal way.

16 And if it is, then the deputy clerk will
17 publish the verdict by reading it.

18 And following that, you will each be polled to
19 insure that it's your individual verdict, and it's
20 unanimous.

21 Following that, I will have some words of
22 thanks for your service.

23 All right. You may proceed.

24 THE CLERK: Mr. Foreman, has the jury reached
25 its unanimous verdict?

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1 THE FOREPERSON: Yes, we have.

2 THE CLERK: Would you please pass the verdict
3 to the court security officer.

4 THE FOREPERSON: (Complied.)

5 (Pause.)

6 THE COURT: All right. May publish the
7 verdict.

8 THE CLERK: (Reading:)

9 In Case Number 09 criminal 47, United States
10 of America versus Henry Obilo, we, the jury, find
11 the defendant, Henry Obilo, respect to Count 1,
12 conspiracy to commit bank fraud, guilty. So say
13 we all this 9th day of April, 2009.

14 Signed by the foreperson.

15 THE COURT: All right, you may be seated.

16 THE DEFENDANT: (Complied.)

17 THE COURT: You may poll the jurors
18 individually.

19 THE CLERK: Juror Number 1, Selena Monroe, is
20 the verdict as read your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Juror Number 2, Victor Gordeuk, is
23 the verdict as read your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Juror Number 3, Olga Lorincz-Reck,

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1 is the verdict as read your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Juror Number 4, William Brakefield,
4 is the verdict as read your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Juror Number 5, Kati Davie, is the
7 verdict as read your verdict?

8 THE JUROR: Yes, it is.

9 THE CLERK: Juror Number 6, Patricia Fox, is
10 the verdict as read your verdict?

11 THE JUROR: Yes, it is.

12 THE CLERK: Juror Number 7, Donerell Dudson, is
13 the verdict as read your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Juror Number 8, Tram McCarthy, is
16 the verdict as read your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror Number 9, Sung-Hee Miller, is
19 the verdict as read your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror Number 10, Michelle Telleria
22 is the verdict as read your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror Number 11, John Childs, is
25 the verdict as read your verdict?

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1 THE JUROR: Yes.

2 THE CLERK: And Juror Number 12, Evelyn
3 Sobarra, is the verdict as read your verdict?

4 THE JUROR: Yes.

5 THE COURT: All right.

6 Ladies and gentlemen, I am now able to thank
7 you for your service as jurors. It's apparent to the Court,
8 and it was apparent by the two days, that you were paying
9 careful and close attention to the evidence. And it's also
10 apparent that you deliberated carefully and diligently and
11 conscientiously in order to reach a unanimous verdict. And
12 for that the Court and, indeed, society, are grateful to
13 you.

14 Now, you are no longer under any constraints
15 about discussing this matter. You may discuss with whomever
16 you wish.

17 Now, counsel, the lawyers in this case, may not
18 contact you. They are forbidden by local rule from
19 contacting you. They may not call you. We do that to
20 insure that you are not bothered or pestered by lawyers. I
21 know that when I tried cases as a lawyer, I was very eager
22 to talk to jurors to see how I affected or offended them.
23 But that's not permitted.

24 Now you, however, may speak to whomever you
25 please.

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1 Let me add a word of caution in that regard.
2 I'm always troubled when I see on the media, television and
3 so forth, jurors discussing with media representatives in
4 public what went on in the course of deliberations.

5 That seems to me to do an injury to the
6 deliberative process. If jurors knew in advance that
7 everything they said or did in the course of jury
8 deliberations was going to be grist for a media mill, I
9 think it would have a chilling effect on jurors. They would
10 not feel free to give a full and complete expression of
11 their feelings in the course of deliberations.

12 So, I suggest to you -- and it is not an order;
13 it is merely a suggestion -- I suggest to you that you have
14 a duty of confidentiality to your fellow jurors to refrain
15 from discussing what when on in the course of deliberations,
16 at least with the media.

17 But you may take your books now and go home,
18 and you may discuss it with whomever you please in whatever
19 depth you wish.

20 However, I remind you of the caution that I
21 just gave you.

22 Now, this case will proceed, and I am pleased
23 to have any of you call or come to see me -- this, after
24 all, the courthouse, the courtroom, they don't belong to me
25 or the judges or the lawyers. They belongs to all of us.

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1 And this is, in a real sense, your courthouse.

2 So, I invite you to come back or to call if you
3 have comments or suggestions or questions of any kind. But
4 wait for 60 or 90 days, because this matter will now proceed
5 to a sentencing phase, approximately 60 or 90 days. And
6 once that's over, I invite you to come by and see me and to
7 sit down and chat if you wish. I would be delighted to do
8 that and to entertain any questions or comments that might
9 have.

10 Thank you very much for your service. You may
11 now take your books and follow Mr. Wood out.

12 And I will insure you are not called again.
13 You have done your service for this period. Thank you.

14 (Jury excused at 10:41 a.m.)

15 FURTHER PROCEEDINGS

16 THE COURT: All right, you may be seated.

17 Mr. Obilo, come to the podium, please.

18 THE DEFENDANT: (Complies.)

19 THE COURT: Mr. Obilo, the jury has found you
20 guilty of the charge in the indictment, engaging in a
21 conspiracy to commit bank fraud, and the Court adjudges you,
22 accordingly, guilty of that offense.

23 The Court will now order the preparation of a
24 presentence investigation report. Mr. Obilo, this is a very
25 important document, because it's the document on which the

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1 Court will chiefly rely in imposing an appropriate sentence.
2 So you should pay careful attention to the preparation of
3 this document.

4 Indeed, you have a role to play in its
5 preparation. You will be asked by a probation officer to
6 provide information so that the report can be prepared.
7 You'll be asked to provide information about your
8 background, your family, your education, your work
9 experience, your health and financial conditions, your
10 version of the offense conduct and, indeed, anything else
11 that may be material in any way to the Court's sentencing
12 decision. And you may have your counsel with you when you
13 provide that information to the probation officer.

14 Now when the report is completed, you'll be
15 furnished with a copy. You'll have an opportunity to review
16 it, to review it with your counsel, and then to call to the
17 Court's attention any objections or any corrections that you
18 have to the report.

19 The government will have the same opportunity,
20 that is, to call to the Court's attention corrections or
21 objections they might have to the report.

22 Now, if either you or the government disputes
23 an objection or correction offered by the other, then the
24 Court will hold a hearing and you'll be permitted to offer
25 evidence, to cross-examine any evidence offered by the

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1 government, and then the Court will resolve that dispute by
2 issuing findings before imposing sentence.

3 Now, at the time of sentencing, Mr. Obilo, the
4 Court will allow you to allocute. That is, you will have
5 the right to address the Court and to say anything at all
6 you wish to the Court by way of extenuation, mitigation or,
7 indeed, anything you think the Court should know before
8 sentence is imposed.

9 You won't be required to address the Court, but
10 you'll have the opportunity to address the Court, as will
11 your counsel also have the opportunity to address the Court
12 on your behalf.

13 Just a moment. I'll set the sentencing date.

14 (Pause.)

15 THE COURT: The earliest date I have is
16 July 17th, 2009, at 9:00 a.m.

17 Is that date available?

18 ATTORNEY IWEANOGE: The Court's indulgence.

19 THE COURT: If it's not, I can perhaps move it
20 into the last week of -- no, let me do this. Let me see the
21 schedule. Maybe we can -- that's too far in advance.

22 ATTORNEY IWEANOGE: I do have -- oh. I do have
23 a sentencing before your Honor on the 10th of July for
24 Melquis Portillo.

25 THE COURT: Yes.

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1 (Pause.)

2 ATTORNEY IWEANOGE: For the record, if the
3 Court wants to go with the 17th, I am also available on the
4 17th, as well.

5 THE COURT: Well, I'm thinking that a better
6 date would be -- the 29th of May would be a better date.

7 ATTORNEY IWEANOGE: Judge, I am going to be in
8 this courthouse. However, I am going to -- I am starting a
9 four-week trial with Judge O'Grady starting on 26th of May.

10 THE COURT: All right. Let me move that, then.
11 Just a moment.

12 ATTORNEY IWEANOGE: Except, if your Honor wants
13 to do it on later on the 29th, because I will be in the
14 courthouse. I believe that Judge O'Grady recesses at 5:00,
15 and if your Honor wants to do it late on the 29th, I will
16 still be here.

17 THE COURT: What about the 5th of June at
18 2:00 o'clock?

19 ATTORNEY IWEANOGE: Judge, I am going to be in
20 the courthouse, and I'm going to be in trial. That's for
21 four weeks. So --

22 THE COURT: Is that trial going to go on
23 Fridays? Do you know?

24 ATTORNEY IWEANOGE: I know that the last trial
25 I had with Judge O'Grady, I think he went on Friday. But I

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1 don't know if he is going to go on Friday.

2 THE COURT: All right.

3 ATTORNEY IWEANOGE: But I can do it on a
4 Friday, Judge, as long as if it's 2:00 o'clock -- if we are
5 sitting on the Friday, then we can do it later on in the
6 afternoon.

7 THE COURT: Well, I will go with July 17th,
8 then. July 17th at 9:00 a.m.

9 You said were available on that date?

10 ATTORNEY IWEANOGE: On that, yes, Judge.

11 THE COURT: All right. July 17th at 9:00 a.m.

12 All right. You may be seated, Mr. Obilo.

13 THE DEFENDANT: (Complied.)

14 THE COURT: Now, what's the government's
15 position with respect to whether he should be remanded or
16 whether he should proceed -- be released on the same
17 conditions?

18 Yes, Mr. --

19 ATTORNEY IWEANOGE: Judge, before we address
20 that, Judge, there are two procedural issues. The first one
21 is the forfeiture issue.

22 THE COURT: Oh, yes.

23 ATTORNEY IWEANOGE: The Court -- I have
24 reviewed the forfeiture -- of course, I reviewed the
25 forfeiture section of the document, and I will be submitting

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1 on the record.

2 The reason, Judge, is, going through everything
3 in the forfeiture, there is nothing there that belongs to my
4 client. So we really have no stake in it, for practical
5 purposes. So we will let that be decided by your Honor. In
6 other words, we don't contest forfeiture.

7 THE COURT: All right. So he will waive jury
8 and proceed -- you will file a pleading on that.

9 ATTORNEY IWEANOGE: Yes, Judge.

10 And then --

11 THE COURT: He may still -- it will still be
12 necessary to have a hearing on it, because the government
13 has to prove to the Court that these are assets that the
14 conspiracy should forfeit.

15 Is that right, Mr. -- that's right, isn't it,
16 Mr. --

17 ATTORNEY EISINGER: That's correct, your Honor.

18 THE COURT: -- Eisinger? All right.

19 So I will have to set a hearing on that.

20 All right, that's the first thing, namely that
21 the defendant waives a jury on that, and we will proceed to
22 have that tried to the Court. I will set a date for that.

23 Next.

24 ATTORNEY IWEANOGE: Judge, the next thing is,
25 pursuant to Rule 29 and Rule 33, I'm making a motion for

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1 judgment of acquittal and for a new trial, and I submit on
2 the record.

3 THE COURT: All right.

4 For the same reasons, I will deny that motion.
5 There was ample evidence from which the jury could find his
6 involvement in the conspiracy beyond a reasonable doubt.

7 Indeed, if the conspiracy -- I beg your
8 pardon -- if the jury were to believe either of the
9 conspirators, or both of them, and all of the rest of the
10 evidence as merely corroborative -- because both of those --
11 two of those testified that he was a member of the
12 conspiracy, that they observed him engaged in activities
13 relating to the conspiracy, to advance the goal of the
14 conspiracy.

15 I think that's right, two of the three did.

16 Is that right, Mr. Eisinger?

17 ATTORNEY EISINGER: I believe that all three
18 said that he was involved. Two of them saw him making phone
19 calls. And one only saw him with the credit reports, your
20 Honor.

21 THE COURT: And that's Gipson.

22 ATTORNEY EISINGER: That's correct, your Honor.

23 THE COURT: All right.

24 So there is ample evidence from which the jury
25 can find its verdict, and I will deny the motion.

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1 Now, we need a date, now, for any hearing on
2 forfeiture, and then we will come back to whether the
3 defendant should be released on conditions pending
4 sentencing.

5 ATTORNEY EISINGER: Can that be done the same
6 date as sentencing, your Honor?

7 THE COURT: It can be done the same day as
8 sentencing.

9 All right. We will do it the same day as
10 sentencing.

11 ATTORNEY EISINGER: Thank you, your Honor.

12 THE COURT: Now, Mr. Eisinger, what's the
13 government's position on with respect to whether this
14 defendant should be remanded today or released on conditions
15 pending appeal?

16 I take it that this is not an offense under
17 3142(a)(2) that requires remand, absent exceptional reasons.

18 ATTORNEY EISINGER: That's correct, your Honor.

19 THE COURT: This is a case in which the Court
20 has to decide whether he is a risk of flight or danger to
21 the community if he is allowed to remain free on conditions
22 pending the sentencing.

23 Is that right?

24 ATTORNEY EISINGER: That's correct, your Honor.

25 THE COURT: All right. What's the government's

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1 position?

2 ATTORNEY EISINGER: The government believes
3 that he should be remanded at this time, your Honor.

4 First, he is facing a very long sentence. Our
5 quick calculation of the guidelines range is that it's
6 probably at least 10 years, and obviously the maximum is up
7 to 30.

8 The defendant has traveled to Nigeria twice in
9 the last 15 months or so, for a total of about three months.
10 He only became a US citizen in August of last year, actually
11 after the arrest warrant was issued. So he certainly has a
12 home in Nigeria if he wanted to go back there.

13 He never -- he never forfeited a Nigerian
14 passport. I believe he claimed that he didn't know where it
15 was or that he lost it or that it was expired. We have no
16 way of verifying that.

17 The information I have gotten from agents is
18 that when people who have ability to be both in the US and
19 Nigeria travel to Nigeria, they normally travel on a
20 Nigerian passport. So it's likely that he had one within
21 the last year and a half, and now he has no idea where it
22 is.

23 Finally, we have the testimony of Ezenwa
24 Onyedebelu at trial, which contradicted the defendant's own
25 statements as to the call that occurred between --

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1 THE COURT: I thought it was fairly consistent.
2 Didn't --

3 ATTORNEY EISINGER: Well, the defendant --

4 THE COURT: -- Onyedebelu testify that
5 Mr. Obilo asked him whether he was going to testify against
6 him?

7 And I think Mr. Onyedebelu said "no," or words
8 to that effect.

9 Isn't that what Mr. Obilo told the Court?

10 ATTORNEY EISINGER: My recollection, anyway,
11 was that Mr. Obilo told the Court that he received a call
12 from Mr. Chikezie Onwumere late at night and didn't know who
13 was on the phone, answered the phone, and said, "I can't
14 talk to you."

15 However, Ezenwa Onyedebelu said that he spoke
16 to him for a couple of minutes, and that it was Mr. Obilo
17 who stated that he wanted to talk to Ezenwa about whether he
18 would be testifying or not.

19 And really, it seems like that makes more
20 sense --

21 THE COURT: So your recollection of the
22 testimony is -- or -- I'm not sure that Mr. Obilo testified.
23 I think what he did, he proffered through counsel, although
24 he said it -- Mr. Iweanoge can refresh my recollection.

25 But your recollection is that Mr. Obilo did not

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1 say or did not admit at that time that he asked him if he
2 was going to testify against him?

3 ATTORNEY EISINGER: That's correct, your Honor.
4 And the defendant did testify. He took the stand and took
5 the oath and testified that he said, "I can't talk to you
6 because I was told not to talk to you."

7 And he also stated at that time that --

8 THE COURT: I do recall -- I do recall telling
9 you in that hearing, at the conclusion of that hearing, that
10 I wanted to be reminded of that at this time, should it be
11 pertinent to do so.

12 Let me ask Mr. Rodriquez.

13 How accessible is that material from the
14 hearing?

15 THE REPORTER: Very accessible.

16 (Laughter.)

17 THE COURT: Well, I will want to look at it in
18 a minute or two. So we will recess and give you that
19 opportunity.

20 ATTORNEY IWEANOGE: I will -- as an officer of
21 the Court, I was going to spare you the process -- I have to
22 be truthful to you -- and state it as it is.

23 THE COURT: All right. Well, I will hear that,
24 too. But I may want to look at it.

25 All right, anything else on this point?

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1 I will hear from Mr. Iweanoge now.

2 ATTORNEY EISINGER: I would just state that
3 based on my recollection of what was said at the prior
4 hearing, that Mr. Obilo stated he barely knew Ezenwa.

5 It makes no sense for someone who is going to
6 go to prison in two weeks to suddenly call someone he barely
7 knows, out of the blue, who he knows he is not supposed to
8 talk to --

9 THE COURT: Well, Chikezie is the one who made
10 the call. That, I think, there is --

11 ATTORNEY EISINGER: Correct.

12 THE COURT: -- unanimity on that.

13 ATTORNEY EISINGER: But the implication was
14 that Ezenwa wanted to talk to Mr. Obilo; that he wasn't
15 simply handing him a phone for no reason, that no one know
16 why Chikezie was handing him the phone.

17 I will leave that to your discretion, your
18 Honor.

19 THE COURT: All right.

20 Do you have anything else, from Mr. Newby?

21 ATTORNEY EISINGER: No, your Honor.

22 THE COURT: All right.

23 Mr. Iweanoge?

24 ATTORNEY IWEANOGE: Yes, judge.

25 Judge, I will ask the Court to continue my

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1 client on his present conditions of bond, which he has
2 abided by.

3 When I got back to my office yesterday, I
4 received an update that came to the Court from the Pretrial
5 Services officer. The name --

6 THE COURT: Yes, I have that here. I read it.

7 ATTORNEY IWEANOGE: Yes.

8 When I saw that yesterday, I said that I will
9 have to remind -- bring to the attention of the Court today
10 that my client went to get the license, and they told him
11 what is represented in that letter.

12 But then -- and then subsequent --

13 THE COURT: He now has a New York license.

14 ATTORNEY IWEANOGE: Yes, Judge.

15 I told him that he should go back there. If
16 they have any problem, they should call me or call pretrial.
17 You cannot submit a passport that is in custody of the
18 Court.

19 And he went back there and they issued him a
20 license.

21 THE COURT: Yes. Well, I think I dealt with
22 that issue.

23 ATTORNEY IWEANOGE: Yes, Judge.

24 THE COURT: I didn't remand him that day
25 because I authority that was a technical violation, and it

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1 was easy for me to understand that he didn't know that, and
2 he needed to get a New York license; which he did.

3 ATTORNEY IWEANOGE: Yes, Judge.

4 THE COURT: And so I didn't remand him.

5 ATTORNEY IWEANOGE: Yes.

6 THE COURT: And I didn't remand him on that day
7 because the only evidence I had before me was that
8 Onyedebelu had called him or Chikezie had, and given the
9 phone to Onyedebelu, and that your client had told him, "I
10 can't talk to you." And that was the end of the matter.

11 So on that evidence, I said he should remain on
12 conditions, which he did.

13 And as I understand it from the report, he has
14 been otherwise completely compliant, other than the ticket
15 that he received, and that violation.

16 Let me ask the Pretrial Services officer, if
17 that person is present in the courtroom.

18 She is not.

19 All right. I am persuaded that he has been
20 otherwise compliant.

21 ATTORNEY IWEANOGE: Yes, Judge.

22 And in terms of the risk of flight argument,
23 Judge, I believe Mr. Eisinger, sitting in the same place
24 three or four years ago, was making the same argument with
25 respect to Mr. Akinfe. The end result, of course, did not

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1 turn out exactly right.

2 But then the problem with making an argument
3 that somebody is a risk of flight, Judge, is, no pun
4 intended, but --

5 THE COURT: Was Akinfe the one who I had agents
6 follow, and he --

7 ATTORNEY IWEANOGE: Yes, Judge.

8 THE COURT: -- did, indeed, try to flee?

9 ATTORNEY IWEANOGE: He was headed to Baltimore,
10 Judge.

11 THE COURT: Headed to Baltimore. I do remember
12 that.

13 ATTORNEY IWEANOGE: Yes.

14 (Laughter.)

15 ATTORNEY IWEANOGE: And your Honor, even though
16 he was facing more time, the government will always say,
17 yes, this person is facing this time and this time, but at
18 the end of --

19 THE COURT: Well, so that this record is clear,
20 we are discussing a case that happened some years ago, two
21 or some more years ago, in which I released a defendant on
22 conditions following a conviction. But at the time I
23 released him, I had some misgivings, so I had -- I directed
24 the probation officer to stake out his house.

25 They did. He left his house, on his way to the

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1 airport, at which time I ordered his arrest, because he did
2 not have permission to go to the Baltimore Airport, from
3 whence he could go elsewhere.

4 ATTORNEY IWEANOGE: Judge, if my recollection
5 is correct -- but your Honor's recollection controls -- he
6 was on I-95, actually going to his office, because --

7 THE COURT: That's what says.

8 ATTORNEY IWEANOGE: Yes, Judge. Yes.

9 THE COURT: It happened to be, also, the way to
10 the airport.

11 ATTORNEY IWEANOGE: That's unfortunately true,
12 Judge. And just like being on 66, one can argue that is
13 straight to Dulles Airport, but then it could be leading to
14 Stafford, as well.

15 But suffice it to say that the problem with
16 making an argument that somebody who has an ancestral home
17 before becoming a United States citizen, or was born in the
18 United States but has an ancestral home, like our present
19 President, that he is susceptible to flee the United States
20 and head off to Kenya, or, in the case of Mr. Obilo, that
21 because he has traveled to Nigeria, that he is now going to
22 rush back and go to Nigeria.

23 But then the surprising thing about this case,
24 Judge, is that since this case has been pending, he has been
25 residing in New York. And at the time that -- during the

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1 pendency of this case, he knew what he was facing, and he
2 could have easily headed to JFK and taken off, or probably
3 driven off to Canada and taken off to Nigeria.

4 But he stayed the course, hired two lawyers in
5 the process, and then went to trial on his case.

6 So if this is somebody who is posing a risk of
7 flight, he wouldn't really wait around in this case to find
8 out what's going to happen. He should have taken off a long
9 time ago.

10 You don't wait to be convicted to take off.
11 You take off, and hopefully stay away until the Statute of
12 Limitation runs out, and then you show up.

13 But suffice it to say, Judge, that the argument
14 about the risk of flight, the problem with that, Judge, is
15 that for him to get to Nigeria, you have three flights that
16 you can get on: British Airways, KLM, or Lufthansa. The
17 first port of call is either to London or Amsterdam or
18 Stuttgart, if I am correct on Lufthansa. I think it's
19 Stuttgart -- one of the German -- yes.

20 Before you board the airplane, Judge, since
21 911, you don't just show up at the airport with a Nigerian
22 are passport and board.

23 First of all, having a Nigerian passport
24 doesn't entitle you to board the plane. There has to be an
25 I-94 accompanying it; otherwise, the airport is going to

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1 call the -- I think they are now called ICE, or BCIS, or one
2 of them, because the Nigerian passport is supposed to have
3 an I-94 that authorizes you to stay.

4 So the Nigerian passport basically means that
5 you are just here, and then you are here illegally.

6 So he doesn't have a Nigerian passport that has
7 an I-94, if you are talking about dual citizenship.

8 And then, to correct the record, he has been a
9 United States citizen since 2005. I don't know how the
10 government record indicates it was last year. But Pretrial
11 can go check it with the Department of State. He has been a
12 citizen since 2005, not last year.

13 But suffice it to say, Judge, that for him to
14 travel, he has to present not just a Nigerian passport at
15 Dulles or BWI to board an airplane. And then, boarding an
16 airplane, it doesn't get the direct flight to Nigeria. You
17 still have to stop at a European country that is an ally of
18 the United States, before you can even make it to Nigeria.

19 So, there is -- let's assume for some reason
20 that your brother seems to be the one minding the airport at
21 National -- I mean at Dulles or BWI and you are able to
22 leave the United States. You will not have to same luck
23 when you land in any of the European countries that I just
24 mentioned.

25 Suffice it to say that the new airline that

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1 started flying directly from Atlanta, George, is now Delta,
2 which is an American airline. For you to board, you must
3 present the proper documentation, which I have also alluded
4 to, judge.

5 But then if my understanding is correct, he has
6 a GPS monitoring on his leg.

7 Am I right?

8 He has a GPS monitoring system on his leg,
9 unlike Akinfe, Judge, who had no monitoring system, and you
10 had to extend the resources to track him.

11 With this man, Judge, I have to call Mr. Alaria
12 (phonetics), even when he has to drive down here to meet
13 with me in preparation for his trial.

14 And even after faxing letters to them, they
15 will still call to confirm what time period that I need him.

16 So, Judge, I do not believe that this man is a
17 risk of flight.

18 Suffice it to say, Judge, that the government
19 argues or states that he is facing ten years. We have the
20 sentencing already set before your Honor on July 17th.
21 We'll deal with -- your Honor has to be the person that
22 makes the decision as to how much time he gets. But I have
23 to bring to the Court's attention that the person so far
24 that has got the most time in this case is somebody with a
25 prior criminal case, Mr. Abel Nnabue, who got 54 months.

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1 And we have Ezenwa Onyedebelu, who got 37 months; Paula
2 Gipson, with a prior record, has not been sentenced, but I
3 would assume she is going to fall within the same range of
4 Mr. Abel Nnabue. And I believe one person is on probation,
5 if I am not mistaken, I think the one who was receiving
6 money.

7 Suffice it to say that, Judge, based on the
8 evidence that your Honor heard in this case, and based on
9 the circumstances of this case, Judge, looking at the plea
10 agreement of the others, and the loss amount that the
11 government put in there, I do not see where the ten years
12 come from.

13 But then even assuming he is facing that much
14 time, Judge, Mr. Eisinger faxed me -- or e-mail me a
15 detailed recitation of the facts and circumstances of this
16 case when I took it over, and the exposure of the defendant.

17 And he was willing to go to trial on this case,
18 Judge, knowing that he had an opportunity to plead on that,
19 but he did not.

20 Suffice it to say, Judge, that in terms of
21 danger to the community, the Pretrial Services report has
22 been good. He has not reoffended or done anything that he
23 shouldn't do.

24 He resides with the mom in New York. We have
25 electronic monitoring in place, so we know where he is at

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1 any point in time. So this isn't a case where he is going
2 to show up at the airport.

3 And Judge, you cannot go past TPA with an
4 electronic monitoring system. I had a client with a case up
5 on appeal, and I believe Judge Mott give him permission to
6 be able to travel to some location, like Michigan, and the
7 other places where he has businesses during the pendency of
8 the case.

9 But then the problem was that he couldn't board
10 an airplane because he has an electronic device, an
11 electronic monitoring system on his leg, and when he goes
12 through the metal detection, it beeps. So he has to drive
13 to all these places, including Michigan and Mississippi,
14 because of his electronic device.

15 So I do not see how somebody wearing an
16 electronic device would be able to go through TSA.

17 I can see the government standing up again and
18 say, Mr. Iweanoge, he can cut it off.

19 But then if you cut it off, then Mr. Alaria is
20 going to know, and an APB put out at the airport.

21 You don't get out of this country without going
22 to the airport. And I don't see how he can make it to
23 Nigeria.

24 So based on those reasons, Judge -- he has no
25 prior record. If you look at his role, or the role in this

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1 case, Judge, it is minimal, at best. And even the three
2 calls that the government says are alluded (sic) to him, no
3 money was lost in that process.

4 You take the testimony of Agent Pak, no money
5 is traceable to him.

6 You take the testimony of Nnabue, Abel, Q, who
7 said he maybe called a couple of times. Maybe sometimes --
8 first time I asked him, maybe December or January.

9 Then when I reminded him, "Isn't it true that
10 he was in Nigeria in December and January," he said, "Yeah,
11 yeah, yeah, you're right. He traveled. That's why I'm kind
12 of saying December or January."

13 And then the time period that this alleged
14 conspiracy supposed to do have done anything in the Eastern
15 District of Virginia is the time that this young man wasn't
16 even in the country.

17 So suffice it to say, Judge, that I do not see
18 how the government will be able to extrapolate and put on a
19 case where this man is facing ten years in jail. I can't --
20 it's not foreseeable to -- at least to this counsel standing
21 up here.

22 So, I do not believe, Judge, that he is facing
23 a long time. He is only 29 years, Judge. Even if he ends
24 up with five years, he still has a whole lot of life left
25 ahead of him.

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1 And, you know, this is -- we all make mistakes.

2 The people that appeared before you, some of
3 them have made mistakes, and they have -- some, Gipson and
4 Abel, decided to go back to it.

5 We can take Onyedebelu at his word, this being
6 his first contact with the system.

7 But, Judge, this Ezenwa Onyedebelu is
8 originally from Nigeria, but we have him walking out on the
9 street. In other words, just because he decided to
10 cooperate with the government, we can trust him to be out on
11 the street and self-surrender, even though he has the same
12 Nigerian passport and has the same American passport and --

13 THE COURT: He doesn't have any passports any
14 more.

15 ATTORNEY IWEANOGE: Oh, yes, Judge.

16 And my client doesn't have any passports,
17 either, Judge.

18 So, in other words, we can trust Onyedebelu to
19 stay there, even though his parents are so rich that they
20 could take him out of the country if they wanted to.

21 I'm not implying that they are.

22 But suffice it to say, Judge, that if we can
23 trust Onyedebelu, we can trust this young man, because it's
24 the same facts and circumstances.

25 Going to the testimony and the issue dealing

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1 with this supposed phone call, Judge, I had forgotten the
2 person that said this, Judge. I heard this on Meet the
3 Press not too long ago. But it goes like this: There is
4 always a road, and on the two sides of the road are
5 sidewalks.

6 In other words, you are either going to be in
7 the middle of the road or you are going to be on the
8 sidewalk.

9 Alluding to the present facts and circumstances
10 of this case, we have the testimony of my client as to this
11 telephone conversation on one side of the sidewalk. We have
12 the testimony of Onyedebelu on the other side of the
13 sidewalk.

14 And as our mothers have told us a long time
15 ago, Judge, the truth lies in the middle.

16 You are the fact-finder.

17 But then I believe, Judge, that the only true
18 person who can tell us what actually transpired during this
19 conversation is Mr. Chikezie Onwumere, who the person that
20 even made the phone call and put anybody through.

21 We have the testimony of my client, that I
22 think run the conversation -- (inaudible).

23 We have the testimony of Onyedebelu, who said
24 that this kind of conversation took place.

25 The government says to your Honor, you should

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1 credit the testimony of Mr. Onyedebelu. Of course, this is
2 the first -- we don't have an opportunity to ask the jurors,
3 "Do you think that Mr. Onyedebelu was telling the truth?"

4 This is the same Onyedebelu that said, "Yes, I
5 paid money into Mr. Obilo's account, Washington Mutual."

6 And we have the lead agent, Detective Pak,
7 saying that, "There was no money I found going to
8 Mr. Obilo."

9 So the government is saying, "Oh, just because
10 Mr. Obilo is convicted, now whatever Onyedebelu says is
11 absolutely 100 percent true, as opposed to my client.

12 In other words, Judge, that really --

13 THE COURT: They are both convicted.

14 ATTORNEY IWEANOGE: Yes, Judge.

15 So, Judge, I do believe that if there is an
16 appropriate case where an individual should continue -- this
17 is not a presumption case -- if there is a case where an
18 individual should be continued on his present conditions,
19 where he has obeyed everything, including going back after
20 he was rejected on the New York license, to go and insist,
21 as I told him -- and I was waiting on the phone -- to talk
22 to the supervisors at DMV in New York, that the passport
23 could not be returned because the Court has it, and they
24 have agreed, and they gave him a New York license -- the mom
25 lives in New York, the family lives there, Judge.

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1 People also make this thing about, yeah, he
2 could flee and go to Nigeria.

3 But if it was such a great country, Judge, for
4 him to flee and go back to Nigeria, you start to wonder why
5 his whole family ended up here in the United States.

6 So many people --

7 THE COURT: I don't have any doubt --

8 ATTORNEY IWEANOGE: Yes, Judge.

9 THE COURT: -- about the reasons. My family
10 were immigrants. Your family is immigrants. But there is a
11 difference between being an immigrant here and being an
12 immigrant in jail.

13 ATTORNEY IWEANOGE: That's right, Judge.

14 THE COURT: Would you prefer to be an immigrant
15 in jail or a free person in Nigeria?

16 ATTORNEY IWEANOGE: Judge, if you remember the
17 other case I had before you, Alaran, a young man --

18 THE COURT: I don't remember it.

19 ATTORNEY IWEANOGE: Mr. Alaran, Judge, was
20 offered a plea, if you recall, for him to get time served,
21 which was three or four days in jail and head on back to
22 Nigeria, and he rejected the plea and said he was going to
23 trial. And he stayed in Alexandria Jail for six months.
24 And we went to trial. Mr. Alaran was convicted. And then
25 we noted an appeal. And he continued, Judge, to sit in jail

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1 instead of going back to Nigeria.

2 THE COURT: All right. I take it there are
3 some people who would prefer to be in this country in jail,
4 rather than overseas. I agree with that. I have had
5 experiences like that.

6 ATTORNEY IWEANOGE: Yes.

7 THE COURT: Anything else?

8 ATTORNEY IWEANOGE: No, Judge.

9 THE COURT: All right.

10 Mr. Eisinger, do you have any response, very
11 briefly?

12 ATTORNEY EISINGER: I just -- a couple of
13 things, your Honor.

14 The first is that this entire scheme is built
15 around hiding one's identity. And Mr. Obilo has now been
16 convicted of using other people identities that he got
17 fraudulently. He was living, at the time he was arrested,
18 in an apartment in someone else's name.

19 So he could easily get out of this country.
20 It's not that hard to walk across a land border to Canada or
21 Mexico. You don't have to use an airport to get out of the
22 United States. It's harder to get in than to get out of the
23 borders.

24 In addition --

25 THE COURT: That's as it should be.

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1 ATTORNEY EISINGER: Correct.

2 The point about Ezenwa versus Mr. Obilo is not
3 necessarily who is generally a more believable person based
4 on their background, who has been convicted of more crimes
5 or whatever, but whose story makes more sense.

6 That someone who Mr. Obilo says he didn't even
7 know more than fleetingly would suddenly call him up for no
8 real apparent reason and want to talk to him, or whether the
9 defendant --

10 THE COURT: Well, I didn't ask you an
11 irrelevant question, but the maker of the call was Chikezie.

12 ATTORNEY EISINGER: Correct, your honor.

13 THE COURT: Where is he?

14 ATTORNEY EISINGER: He is in New York
15 currently, your Honor.

16 THE COURT: Does the government intend to
17 prosecute him?

18 ATTORNEY EISINGER: We are not sure if we want
19 to or not, your Honor.

20 THE COURT: All right. And you haven't --

21 ATTORNEY EISINGER: There is also --

22 THE COURT: -- found Onwumere.

23 ATTORNEY EISINGER: -- a separate case in New
24 York, your Honor.

25 THE COURT: I beg your pardon?

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1 ATTORNEY EISINGER: There is also a separate
2 case going on in New York, your Honor.

3 THE COURT: I see. On another matter.

4 ATTORNEY EISINGER: They are related -- it's a
5 related scheme with related people.

6 THE COURT: And I take it you haven't found
7 Onwumere yet.

8 ATTORNEY EISINGER: That's correct, your Honor.

9 THE COURT: But basically, the point you are
10 making is that I should believe Onyedebelu about that phone
11 call rather than Mr. Obilo.

12 ATTORNEY EISINGER: Well, I believe, your
13 Honor, that his story makes more sense. It's more credible
14 in terms of what he is saying, that somebody who is about to
15 go to trial and who states on the phone to him, "Without
16 your testimony they have no case," has a reason to call
17 Mr. Onyedebelu and see if he is going to testify.

18 Because if he is not, then he can to trial --

19 THE COURT: Except Mr. Obilo didn't make the
20 call.

21 ATTORNEY EISINGER: Correct. But he had at
22 least --

23 THE COURT: You are suggesting that the call by
24 Chikezie was prompted by Obilo.

25 ATTORNEY EISINGER: That's correct, your Honor.

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1 THE COURT: Well, I'm going to ask Mr.
2 Rodriquez to find it, because I do want to hear what
3 Mr. Obilo said about it without having to rely on anyone's
4 memory.

5 And I take it you would also point out the
6 provision, 3143(a).

7 Anything else?

8 ATTORNEY EISINGER: No, your Honor.

9 THE COURT: All right. I will take a brief
10 recess to give Mr. Rodriquez an opportunity to find that --
11 to find that excerpt from the hearing.

12 It's just the excerpt in which he testified,
13 Mr. Obilo testified.

14 And I'll -- once you find that, I'll have you
15 read it in open court, and then I will resolve the matter.

16 Court stands in recess.

17 (Court recessed at 11:17 a.m.)

18 (Court called to order at 11:34 a.m.)

19 THE COURT: Mr. Rodriquez, have you found his
20 testimony?

21 THE REPORTER: Yes, sir.

22 THE COURT: Is it difficult to print out a
23 transcript, or is it easier to read?

24 THE REPORTER: I can read it.

25 THE COURT: How long is it?

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1 THE REPORTER: It's just a paragraph.

2 THE COURT: All right. Go ahead.

3 (The reporter read the record as requested.)

4 THE COURT: Thank you.

5 Let me ask some further questions here.

6 Mr. Eisinger, how did you get the ten years?

7 ATTORNEY EISINGER: It's based on the loss
8 figure of approximately \$2-1/2 million.

9 THE COURT: So the loss figure is greater than
10 that that was known at the time of the sentencing of the
11 others.

12 ATTORNEY EISINGER: The loss figure that this
13 specific defendant was responsible for -- if we only hold
14 him responsible for the losses that he was attributed to,
15 not the entire scheme. If it's the entire scheme, it goes
16 much higher.

17 In addition, we expect to have a level
18 enhancement for having a leadership role, that he had at
19 least two people working under him as part of this scheme.

20 THE COURT: And you will have evidence to
21 support that.

22 ATTORNEY EISINGER: Yes, your Honor.

23 THE COURT: Now, tell me once again, what was
24 the amount that you think will be attributable to him?

25 ATTORNEY EISINGER: More than \$2-1/2 million,

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1 your Honor.

2 THE COURT: And what's the total amount?

3 ATTORNEY EISINGER: The total loss was over
4 \$8 million. The total attempts were over \$29 million. And
5 the total number of victims would go from at least 10 that
6 we know of now, probably up over 250, if we are including
7 everyone involved in this scheme.

8 THE COURT: This indicates again why the first
9 of the defendants in the conspiracy on the bus, the better,
10 because they not only have the opportunity to cooperate, but
11 they also usually -- the amount of the loss is usually
12 smaller, because the government hasn't learned as much as it
13 ultimately does learn.

14 ATTORNEY EISINGER: That's correct, your Honor.
15 In addition --

16 THE COURT: I guard --

17 ATTORNEY EISINGER: -- they all got --

18 THE COURT: -- against that on unwarranted
19 disparities, though. The question is, it may not be an
20 unwarranted disparity.

21 Go ahead.

22 ATTORNEY EISINGER: In addition, they all got
23 acceptance of responsibility of three points, which the
24 defendant will not get.

25 THE COURT: And what did you tell me about his

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1 Nigerian passport?

2 ATTORNEY EISINGER: I believe we were told
3 at -- I believe this was in front of Judge Davis at his --
4 when he first got bond, he claimed that he didn't have a
5 passport or he had lost it or he didn't know where it was.

6 No Nigerian passport has been turned in. And
7 we are fairly confident that he had one at least in January,
8 February, April of last year.

9 THE COURT: It used to be required, when you
10 became an American, that you turned in your former
11 passports.

12 The particular group that always had difficulty
13 with this were Iranians who became Americans, because you
14 can't travel back to Iran on an American passport very
15 easily. So they would always try to keep their Iranian
16 passports, in contravention to the order to surrender those.

17 The whole issue of dual citizenship is very
18 murky. It's hard for me to understand how one can be a dual
19 citizen, when the oath you take when you become an American
20 citizen by naturalization is that you renounce and adjure
21 all fidelity, loyalty and the like to any foreign prince,
22 potentate, et cetera. In other words, you give up your
23 allegiance.

24 The US can never stop another country from
25 recognizing a person as a citizen, if that person is an

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1 American. In other words, some country, Ireland, wants to
2 say, "We will recognize Mr. Eisinger as an Irish citizen,
3 the US can't do anything about that. It's none of our
4 business.

5 But when you take the oath that you give up
6 your allegiance, as far as the United States is concerned,
7 you are an American, and only an American.

8 This has come up sometimes in situations where
9 people try to serve in the armed forces of another country.
10 All right.

11 The bottom line is, we don't have his Nigerian
12 passport. He says that he has misplaced it, doesn't have it
13 any more.

14 His American passport is in custody. He
15 doesn't have that. Is that right?

16 ATTORNEY EISINGER: That's correct, your Honor.

17 THE COURT: And the government feels he may yet
18 have a Nigerian passport, because he traveled there
19 recently, although he did so on an American passport, when
20 he came back here. What passport he used when he arrived in
21 Nigeria is another matter.

22 Mr. Iweanoge says it's really very difficult
23 for him to get out of this country. He has explained all
24 the reasons why that is so.

25 All right. Just focusing on the issue of the

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1 amount that -- or what he is facing by way of a sentence and
2 anything else I mentioned, do you have anything further you
3 want to add, Mr. Iweanoge?

4 ATTORNEY IWEANOGE: Judge, even with the
5 government's best effort in terms of the cancellation of the
6 loss, I still do not believe that they will be able to put
7 on a case that will even be close to the amount.

8 And with the disparity that your Honor alluded
9 to in terms of the sentencing of the other defendants, that
10 will also be an issue under the 3553 factors.

11 But most importantly, Judge, the law is, of
12 course, that you are responsible for whatever the other
13 coconspirators do. But then --

14 THE COURT: Well, you are not responsible for
15 everything they do, but you are -- in the sentencing scheme,
16 you are chargeable with the losses or amount of the intended
17 losses that were reasonably foreseeable by you as a member
18 of the conspiracy.

19 I think I have gotten that right, haven't I?

20 ATTORNEY IWEANOGE: Yes, you did, Judge.

21 THE COURT: All right.

22 ATTORNEY IWEANOGE: And using that analysis,
23 the Court got it exactly right; exactly right. And using
24 that analysis, Judge, the foreseeability test is not even
25 going to be close to the \$2.6 million that the government

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1 alludes.

2 Because their own witness says, Mr. Q -- no, I
3 can't call him the initial -- Abel Nnabue, said that he saw
4 my client making two calls. And that's all he testified to.

5 And then when I then cross-examined on those
6 two calls, when was the first one, he said that it was
7 sometime December or January.

8 And then when I then reminded him that in
9 December or January of that year, that my client was not in
10 the country, he said, "Oh, yeah, yeah, you are right. He
11 traveled. That's why I cannot say it's between this
12 period."

13 In other words, if you look between the time
14 period of this incident that happened in the Eastern
15 District of Virginia with the sentence, Federal Credit Union
16 and the State Department Federal Credit Union, Judge, he
17 wasn't even around.

18 And then let's assume that you say that the one
19 that happened on 9/26 in Miami, Florida, and Scottsdale,
20 Arizona, with Mr. Fraser and Mr. Frazier, the two Fraziers,
21 Judge, that's not even in the Eastern District of Virginia.
22 But then assuming that it's still part of this conspiracy,
23 Judge --

24 THE COURT: Well, it wouldn't matter where it
25 was --

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1 ATTORNEY IWEANOGE: Absolutely, Judge. If you
2 look at the amounts involved and use the foreseeability
3 test, Judge, that puts the numbers at, I will say, more than
4 400,000, but less than a million dollars.

5 THE COURT: All right.

6 ATTORNEY IWEANOGE: So, with respect to that,
7 Judge, the numbers are not as high.

8 In terms of the leadership role, Judge, even
9 the testimony of their own witnesses doesn't even ascribe
10 any leadership role.

11 Of course, at sentencing, we will put on the
12 agents who talked to these people, and we will talk about
13 who is closest to Toby, who has talked to Toby. I mean, if
14 the government never sought a leadership role for Ezenwa
15 Onyedebelu, who was talking to Toby, who has been a
16 fugitive, and then who is supposed to his right-hand man,
17 and then not talking to Abel, Q, who he had done prior -- I
18 mean deals in the past with, and these individuals are in
19 Nigeria, and never did any deals together, and then Abel
20 Nnabue received a \$100,000 cash in Nigeria -- if those
21 people are not held to a leadership role, I cannot see --

22 THE COURT: How much money you get doesn't
23 dictate whether you have a leadership role or not.

24 ATTORNEY IWEANOGE: Absolutely, Judge. What
25 I'm saying is, I cannot see, based on the 302s that I have

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1 read, even from Precious Matthews, even from Agent Nail,
2 Etienne, the report from Detective Charles Pak, everything
3 that I have read in this case and every law that I know
4 governing leadership role, Judge, I do not see any witness,
5 and how government can possibly even make a case for either
6 a leader, organizer, supervisor, manager or managerial role
7 in this case, Judge.

8 THE COURT: All right. Just a moment.

9 Let me see either the indictment or the verdict
10 form.

11 (Pause.)

12 THE COURT: What's the substantive offense
13 provision?

14 Is it 1344?

15 ATTORNEY EISINGER: Yes, it is --

16 ATTORNEY IWEANOGE: Yes.

17 ATTORNEY EISINGER: -- your Honor.

18 THE COURT: All right.

19 (Pause.)

20 THE COURT: All right. The matter is before
21 the Court on the defendant's -- or the government's request
22 that this defendant be remanded, and the defendant's
23 objection to that.

24 The defendant has been convicted of engaging in
25 a conspiracy to commit bank fraud. The government argues

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1 that he should be detained because he is a risk of flight.

2 The government argues that he is a risk of
3 flight because he has been known to travel recently to
4 Nigeria. He's an American citizen, although he came from
5 Nigeria. He became an American citizen in 2005. He has
6 traveled to Nigeria since then in connection -- or together
7 with other members of this conspiracy in 2007.

8 And the government suggests that he would be
9 likely to flee. And the government also points out that he
10 hasn't been truthful.

11 The defendant points out that he has been
12 compliant, and that he has been on GPS monitoring.

13 In fact, I don't think he has been on GPS
14 monitoring, because they don't have that in New York. I
15 think what --

16 ATTORNEY EISINGER: That's correct, your Honor.

17 THE COURT: What is it that they do have in New
18 York?

19 He does wear a bracelet, but it isn't GPS
20 monitoring. It's something else.

21 ATTORNEY IWEANOGE: Judge --

22 THE COURT: It's electronic monitoring.

23 ATTORNEY IWEANOGE: Electronic -- oh.

24 THE COURT: It's not GPS monitoring.

25 ATTORNEY IWEANOGE: Oh, okay.

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1 THE COURT: They don't have GPS monitoring in
2 New York. He's on electronic monitoring --

3 ATTORNEY IWEANOGE: Okay.

4 THE COURT: -- which means that he can't go, he
5 can't leave his home, or the telephone, within a certain
6 radius of his telephone, unless he has permission to do so.

7 But once he leaves, he can go anywhere and they
8 can't track him, because it isn't GPS monitoring.

9 In other words, if he said he was going out
10 shopping for a while, and they said, "Okay, go," they don't
11 know where he goes. Because they don't have GPS monitoring
12 in New York, to my surprise, even though that's what I
13 ordered.

14 They do have electronic monitoring. So they
15 would know that he had left his house at a particular time,
16 but they wouldn't know anything other than that. And they
17 would know where he told them he was going.

18 Now, to continue, he has been otherwise
19 compliant. He has appeared here. He did not flee. And the
20 situation is only different now that he has been convicted.

21 The government contends that he is facing up to
22 a 10-year sentence. The government suggests that the loss
23 attributable under 2B 1.1 would be in excess of a million --
24 I think you said 2 million 7?

25 ATTORNEY EISINGER: In excess of 2.5 million,

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1 your Honor.

2 THE COURT: All right. Then that would make
3 it -- that still wouldn't put him at ten years. But if you
4 added three levels for leadership -- is that what you are
5 saying?

6 ATTORNEY EISINGER: Correct, your Honor, plus
7 the two-year -- or the two points for the "out of this
8 country/sophisticated means."

9 THE COURT: All right. That might get it --

10 ATTORNEY EISINGER: And then --

11 THE COURT: That might get it close to that,
12 but it may not. As Mr. Iweanoge pointed out, he doesn't see
13 how the trial testimony establishes 2.5 million foreseeable
14 to him. And in that regard, he's correct.

15 But of course, the government isn't limited to
16 the trial testimony. At sentencing they can offer
17 additional testimony to establish the loss attributable to
18 the conspiracy, and why he would -- why it would be
19 reasonably foreseeable to him.

20 But I think it is fair to say that at this
21 time, even by Mr. Iweanoge's reckoning, that he faces
22 somewhere between four to six years, even if there aren't
23 any enhancements. And there are going to be enhancements;
24 at least five years.

25 So he does face a substantial sentence, which I

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1 will take into account.

2 So we come back to the standard that the Court
3 has to reply in 3143(a). In 3143(a) the Court is required
4 to follow the following provision:

5 A person who has been found guilty of an
6 offense and who is awaiting imposition or
7 execution of sentence, other than a person for
8 whom the government does not recommend a term of
9 imprisonment, that person must be detained --
10 here, the government does not recommend that there be no
11 term of imprisonment. So...
12 ...that person must be detained, unless the Court
13 finds by clear and convincing evidence that the
14 person is not likely to flee or pose a danger to
15 the safety of any other person or the community if
16 released under 3142(b) or (c) --
17 that is, under conditions.

18 So the question is whether there is clear and
19 convincing evidence that he will not flee.

20 Now, I asked the court reporter to find the
21 portion of this hearing in which I denied an effort by the
22 government to have him remanded prior to trial, based on his
23 receiving a ticket in New York for driving without a license
24 and some other matters, and also for communicating with a
25 coconspirator when he was not permitted to do so.

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1 The driving matter, the license matter, I made
2 clear, was not a significant matter. I would not have
3 remanded Mr. Obilo for that. It's easy to understand why he
4 didn't -- may not have understood it, and he should have
5 gotten a New York license, which he now has.

6 But I was very concerned about whether he had
7 violated the Court's order about talking to other
8 coconspirators. Because if so, then I would remand him. If
9 I can't rely on him or trust him to follow the Court's
10 orders, then he should be remanded.

11 He testified at that hearing that he had
12 received a call from Chikezie, or whatever his name is, and
13 that Chikezie had said, "Someone here wants to talk to you."
14 And then it turned out to be Onyedebelu.

15 And he said that as soon -- once he knew that
16 it was Onyedebelu, he said, "I can't talk to you," and that
17 was the end of the matter. And he had no further contact
18 with him.

19 Onyedebelu tells a different story.
20 Onyedebelu, under oath here at the trial, testified that he
21 was with Chikezie. Chikezie made a call, handed him the
22 phone, and it was Mr. Obilo on the other end; and that
23 Mr. Obilo asked him -- well, Mr. Rodriguez read that, but
24 it's a different story. Mr. Onyedebelu says, "Why are you
25 testifying against me," or, "Are you testifying against me?"

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1 He said, "No."

2 I think he said something else.

3 What was it, Mr. Rodriguez?

4 Can you read that except once more, so I have
5 that clearly in mind?

6 (The reporter read the record as requested.)

7 THE COURT: That's clearly at odds with what
8 Mr. Onyedebelu said, because he said, "Are you going to
9 testify against me," and some other thing.

10 What was it, Mr. Eisinger?

11 ATTORNEY EISINGER: I believe, your Honor, that
12 he was asked if he was going to testify, and he said, "No."

13 On cross-examination he was asked, "Why did you
14 lie about testifying?"

15 And he said, "I didn't lie. At that time, I
16 hadn't been called to testify."

17 THE COURT: All right.

18 ATTORNEY IWEANOGE: Judge, for the record, to
19 correct that, it wasn't on cross-examination. It was still
20 on direct examination that he said, he said that.

21 THE COURT: All right. All right. To me, it
22 doesn't matter.

23 Clearly, those stories are add odds, and they
24 give me great concern -- some concern about whether
25 Mr. Obilo obeys court orders.

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In the end, I do not find by clear and convincing evidence that he would not flee. I don't find he is a danger to the community, but I cannot find, on this record, clear and convincing evidence that he would not flee, given all the facts and circumstances.

Accordingly, Mr. Obilo is remanded to the custody of the United States Marshals.

All right. I thank counsel for your cooperation.

I will note for the record that Mr. Iweanoge's performance in court indicates that he represented his client fully and effectively and zealously.

Anything further on behalf of the government or
the defendant?

ATTORNEY EISINGER: No your Honor.

ATTORNEY IWEANOGE: Thank you, Judge, for
accommodating me this morning, as well.

THE COURT: Court stands in recess.

(Court recessed at 11:58 a.m.)

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CERTIFICATE OF REPORTER

I, MICHAEL A. RODRIQUEZ, an Official Court Reporter for the United States District Court, in the Eastern District of Virginia, Alexandria Division, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and evidence adduced upon the jury trial in the case of UNITED STATES OF AMERICA v. HENRY Obilo.

I further certify that I was authorized and did report by stenotype the proceedings and evidence in said jury trial, and that the foregoing pages, numbered 1 to 56, inclusive, constitute the official transcript of said proceedings, Volume 3, as taken from my machine shorthand notes.

IN WITNESS WHEREOF, I have hereto subscribed my name this _____ day of _____, 2010.

Michael A. Rodriguez, RPR/CM/RMR
Official Court Reporter

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